

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 132
96TH GENERAL ASSEMBLY

0896L.07C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 384.061, 385.200, 385.206, and 385.208, RSMo, and to enact in lieu thereof fourteen new sections relating to certain specialty lines insurance contracts, with penalty provisions, an emergency clause for certain sections, and an effective date for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 384.015, 384.017, 384.021, 384.043, 2 384.051, 384.057, 384.061, 385.200, 385.206, and 385.208, RSMo, 3 are repealed and fourteen new sections enacted in lieu thereof, 4 to be known as sections 384.015, 384.017, 384.021, 384.043, 5 384.051, 384.057, 384.061, 385.200, 385.205, 385.206, 385.207, 6 385.208, 385.209, and 385.211, to read as follows:
7 384.015. As used in sections 384.011 to 384.071 , the
8 following terms shall mean:
9 (1) "Admitted insurer" [means] an insurer licensed to do
10 an insurance business in this state;
11 (2) "Capital" [means] funds paid in for stock or other
12 evidence of ownership;
13 (3) "Director" [means] the director of the department of
14 insurance, financial institutions and professional registration;
15 (4) "Eligible surplus lines insurer" [means] a
16 nonadmitted insurer with which a surplus lines licensee may
17 place surplus lines insurance;

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18 (5) "Exempt commercial purchaser", any person purchasing
19 commercial insurance that, at the time of placement, meets the
20 following requirements:

21 (a) The person employs or retains a qualified risk manager
22 to negotiate insurance coverage;

23 (b) The person has paid aggregate nationwide commercial
24 property and casualty insurance premiums in excess of one
25 hundred thousand dollars in the immediately preceding twelve
26 months; and

27 (c) a. The person meets at least one of the following
28 criteria:

29 i. The person possesses a net worth in excess of twenty
30 million dollars, as such amount is adjusted under subparagraph
31 b. of this paragraph;

32 ii. The person generates annual revenues in excess of
33 fifty million dollars, as such amount is adjusted under
34 subparagraph b. of this paragraph;

35 iii. The person employs more than five hundred full-time
36 or full-time equivalent employees per individual insured or is
37 a member of an affiliated group employing more than one thousand
38 employees in the aggregate;

39 iv. The person is a not-for-profit organization or public
40 entity generating annual budgeted expenditures of at least
41 thirty million dollars, as such amount is adjusted under
42 subparagraph b. of this paragraph; or

43 v. The person is a municipality with a population in
44 excess of fifty thousand persons.

45 b. Effective on the fifth January first occurring after
46 the date of the enactment of United States Public Law 111-203
47 and each fifth January first occurring thereafter, the amounts
48 in items i, ii, and iv of subparagraph a. of this paragraph
49 shall be adjusted to reflect the percentage change for such
50 five-year period in the consumer price index for all urban
51 consumers published by the United States Bureau of Labor
52 Statistic of the Department of Labor;

53 (6) "Export" [means], to place surplus lines insurance
54 with a nonadmitted insurer;

55 (7) "Home state":

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56 (a) Except as provided in paragraph (b) of this
57 subdivision, the term "home state" means, with respect to an
58 insured:

59 a. The state in which an insured maintains its principal
60 place of business or, in the case of an individual, the
61 individual's principal residence; or

62 b. If one hundred percent of the insured risk is located
63 out of the state referred to in subparagraph a. of this
64 paragraph, the state to which the greatest percentage of the
65 insured's taxable premium for that insurance contract is
66 allocated;

67 (b) If more than one insured from an affiliated group are
68 named insureds on a single nonadmitted insurance contract, the
69 term "home state" means the home state, as determined under
70 paragraph (a) of this subdivision, of the member of the
71 affiliated group that has the largest percentage of premium
72 attributed to it under such insurance contract;

73 (c) The principal place of business is the state where the
74 insured maintains its headquarters and where the insured's high-
75 level officers direct, control and coordinate the business
76 activities of the insured;

77 [(6)] (8) "Kind of insurance" [means], one of the types of
78 insurance required to be reported in the annual statement which
79 must be filed with the director by admitted insurers;

80 (9) "Nonadmitted insurance", any property and casualty
81 insurance permitted to be placed directly or through a surplus
82 lines licensee with a nonadmitted insurer eligible to accept
83 such insurance;

84 [(7)] (10) "Nonadmitted insurer" [means], an insurer not
85 licensed to do an insurance business in this state, including
86 insurance exchanges authorized under the laws of other states;

87 [(8)] (11) "Producing broker" [means], the individual
88 broker or agent dealing directly with the party seeking
89 insurance;

90 (12) "Qualified risk manager", shall have the same meaning
91 prescribed in the Nonadmitted and Reinsurance Reform Act of 2010
92 (15 U.S.C. Section 8206);

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93 [(9)] (13) "Surplus" [means], funds over and above
94 liabilities and capital of the company for the protection of
95 policyholders;

96 [(10)] (14) "Surplus lines insurance" [means], any
97 insurance of risks resident, located or to be performed in this
98 state, permitted to be placed through a surplus lines licensee
99 with a nonadmitted insurer eligible to accept such insurance,
100 other than reinsurance, [wet marine and transportation insurance
101 independently procured,] and life and health insurance and
102 annuities;

103 [(11)] (15) "Surplus lines licensee" [means], a person
104 licensed to place insurance on risks resident, located or to be
105 performed in this state with nonadmitted insurers eligible to
106 accept such insurance;

107 [(12)] (16) "Wet marine and transportation insurance"
108 [means]:

109 (a) Insurance upon vessels, crafts, hulls and of interests
110 therein or with relation thereto;

111 (b) Insurance of marine builder's risks, marine war risks
112 and contracts of marine protection and indemnity insurance;

113 (c) Insurance of freights and disbursements pertaining to
114 a subject of insurance coming within this section; and

115 (d) Insurance of personal property and interests therein,
116 in the course of exportation from or importation into any
117 country, or in the course of transportation coastwise or on
118 inland waters, including transportation by land, water or air
119 from point of origin to final destination, in connection with
120 any and all risks or periods of navigation, transit or
121 transportation, and while being prepared for and while awaiting
122 shipment, and during any delays, transshipment, or reshipment
123 incident thereto.

124 384.017. Surplus lines insurance may be [procured through]
125 placed by a surplus lines licensee [from nonadmitted insurers]
126 if:

127 (1) Each insurer is an eligible surplus lines insurer;

128 (2) Each insurer is authorized to write the type of
129 insurance in its domiciliary jurisdiction;

130 (3) The full amount or kind of insurance is not obtainable
131 from admitted insurers who are actually transacting in this

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132 state the class of insurance required by the insured. Insurance
133 shall be deemed "obtainable" within the meaning of this section
134 if there is available a market with admitted insurers that can
135 supply the insured's requirements both as to type of coverage
136 and as to quality of service. "Type of coverage", as used in
137 this section, refers to hazards covered and limits of coverage.
138 "Quality of security and service", as used in this section,
139 refers to the rating by a recognized financial service; and

140 [(3)] (4) All other requirements of sections 384.011 to
141 384.071 are met.

142 384.021. [No] 1. A surplus lines licensee shall not place
143 [any] coverage with a nonadmitted insurer, unless, at the time
144 of placement, [such nonadmitted insurer] the surplus lines
145 licensee has determined that the nonadmitted insurer:

146 (1) [Has established satisfactory evidence of good repute
147 and financial integrity;

148 (2) Qualified under one of the following paragraphs:

149 (a) Has capital and surplus or its equivalent under the
150 laws of its domiciliary jurisdiction, which equals [this
151 state's] the greater of the minimum capital and surplus
152 requirements under the laws of this state [as defined in
153 sections 379.010 and 379.080; or

154 (b) In the case of Lloyd's or other similar groups
155 including incorporated and individual unincorporated
156 underwriters, the incorporated members of which shall not be
157 engaged in any business other than underwriting as a member of
158 the group and shall be subject to the same level of solvency
159 regulation and control by the group's domiciliary regulator as
160 are the unincorporated members, maintains a trust fund of not
161 less than fifty million dollars as security to the full amount
162 thereof for all policyholders and creditors in the United States
163 of each member of the group, and such trust shall likewise
164 comply with the terms and conditions established in subdivision
165 (1) of this section for alien insurers; and

166 (c) In the case of an "insurance exchange" created by the
167 laws of individual states, maintain capital and surplus, or the
168 substantial equivalent thereof, of not less than fifteen million
169 dollars in the aggregate. For insurance exchanges which
170 maintain funds for the protection of all insurance exchange

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171 policyholders, each individual syndicate shall maintain minimum
172 capital and surplus, or the substantial equivalent thereof, of
173 not less than one million five hundred thousand dollars. In the
174 event the insurance exchange does not maintain funds for the
175 protection of all insurance exchange policyholders, each
176 individual syndicate shall meet the minimum capital and surplus
177 requirements of paragraph (a) of this subdivision;

178 (3) Has caused to be provided to the director a copy of
179 its current annual statement certified by such insurer, such
180 statement to be provided no more than six months after the close
181 of the period reported upon and which is either:

182 (a) Filed with and approved by the regulatory authority in
183 the domicile of the nonadmitted insurer; or

184 (b) Certified by an accounting or auditing firm licensed
185 in the jurisdiction of the insurer's domicile; or

186 (c) In the case of an insurance exchange, the statement
187 may be an aggregate combined statement of all underwriting
188 syndicates operating during the period reported;

189 (4) In addition to meeting the requirements in
190 subdivisions (1) to (3) of this section, an insurer shall be an
191 eligible surplus lines insurer if it] or fifteen million
192 dollars, except that the requirements of this subdivision may be
193 satisfied by an insurer's possessing less than the minimum
194 capital and surplus upon an affirmative finding of acceptability
195 by the director provided that the finding shall be based upon
196 such factors as quality of management, capital and surplus of
197 any parent company, company underwriting profit and investment
198 income trends, market availability and company record and
199 reputation within the industry, and in no event shall the
200 director make an affirmative finding of acceptability when the
201 nonadmitted insurer's capital and surplus is less than four
202 million five hundred thousand dollars; and

203 (2) Appears on the most recent list of eligible surplus
204 lines insurers published by the director from time to time but
205 at least semiannually[. The director shall be required to place
206 and maintain the name of any nonadmitted insurer which is
207 eligible and which makes a request to be on the list of eligible
208 surplus lines insurers] or on the most recent quarterly listing
209 of alien insurers maintained by the international insurers

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210 department of the National Association of Insurance
211 Commissioners.

212 2. Notwithstanding any other provision of this chapter or
213 rules adopted to implement the provisions of this chapter, a
214 surplus lines licensee seeking to procure or place nonadmitted
215 insurance in Missouri for an exempt commercial purchaser shall
216 not be required to satisfy any requirement to make a due
217 diligence search to determine whether the full amount or type of
218 insurance sought by such exempt commercial purchaser can be
219 obtained from nonadmitted insurers if:

220 (1) The surplus lines licensee procuring or placing the
221 surplus lines insurance has disclosed to the exempt commercial
222 purchaser that such insurance may or may not be available from
223 the admitted market that may provide greater protection with
224 more regulatory oversight; and

225 (2) The exempt commercial purchaser has subsequently
226 requested in writing the surplus lines licensee to procure or
227 place such insurance from a nonadmitted insurer.

228 384.043. 1. No insurance producer shall procure any
229 contract of surplus lines insurance with any nonadmitted
230 insurer, unless he possesses a current surplus lines insurance
231 license issued by the director.

232 2. The director shall issue a surplus lines license to any
233 qualified holder of a current resident or nonresident property
234 and casualty insurance producer license but only when the
235 licensee has:

236 (1) Remitted the one hundred dollar initial fee to the
237 director;

238 (2) Submitted a completed license application on a form
239 supplied by the director; and

240 (3) Passed a qualifying examination approved by the
241 director, except that all holders of a license prior to July 1,
242 1987, shall be deemed to have passed such an examination.

243 3. Each surplus lines license shall be renewed for a term
244 of two years on the biennial anniversary date of issuance and
245 continue in effect until refused, revoked or suspended by the
246 director in accordance with section 384.065; except that if the
247 biennial renewal fee for the license is not paid on or before

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248 the anniversary date, the license terminates. The biennial
249 renewal fee is one hundred dollars.

250 4. Beginning on or before July 1, 2012, the director shall
251 participate in the national insurance producer database of the
252 National Association of Insurance Commissioners, or any other
253 equivalent uniform national database, for the licensure of
254 surplus lines licensees and the renewal of such licenses.

255 5. Notwithstanding any other provision of this chapter, a
256 person selling, soliciting, or negotiating nonadmitted insurance
257 with respect to an insured shall be required to obtain or
258 possess a current surplus lines insurance license issued by the
259 director only if this state is such insured's home state.

260 384.051. 1. Every insured [in] whose home state is this
261 state who procures or causes to be procured or continues or
262 renews insurance in any surplus lines insurer, or any
263 self-insurer [in] whose home state is this state who so procures
264 or continues with, any surplus lines insurer, excess of loss,
265 catastrophe or other insurance, [upon a subject of insurance
266 resident, located or to be performed within this state,] other
267 than insurance procured through a surplus lines broker pursuant
268 to sections 384.011 to 384.071, shall before March second of the
269 year next succeeding the year in which the insurance was so
270 procured, continued or renewed, file a written report of the
271 same with the director on forms prescribed by the director and
272 furnished to such an insured upon request. The report shall
273 show:

- 274 (1) The name and address of the insured or insureds;
275 (2) The name and address of the insurer or insurers;
276 (3) The subject of the insurance;
277 (4) A general description of the coverage;
278 (5) The amount of premium currently charged therefor;
279 (6) Such additional pertinent information as may be
280 reasonably requested by the director.

281 2. [If any such insurance covers also a subject of
282 insurance resident, located or to be performed outside this
283 state, for the purposes of this section, a proper pro rata
284 portion of the entire premium payable for all such insurance
285 shall be allocated as to the subjects of insurance resident,
286 located or to be performed in this state.

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287 3. Any insurance in a surplus lines insurer procured
288 through negotiations or an application in whole or in part
289 occurring or made within or from within this state, or for which
290 premiums in whole or in part are remitted directly or indirectly
291 from within this state, shall be deemed to be insurance procured
292 or continued or renewed in this state within the intent of
293 subsection 1 of this section.

294 4.] For the general support of the government of this
295 state there is levied upon the insured or self-insurer who
296 procures insurance pursuant to [subsections 1 and 3] subsection
297 1 of this section a tax at the rate of five percent of the [net]
298 gross amount of the premium [in respect of risks located in this
299 state]. Before April sixteenth of the year next succeeding the
300 year in which the insurance was so procured, continued or
301 renewed, the insured shall remit to the department of revenue
302 the amount of the tax. The department of revenue shall notify
303 the director of the sums collected from each insured or self-
304 insurer.

305 384.057. 1. Before March second of each year, each
306 surplus lines broker shall report under oath to the director on
307 forms prescribed by him or her a statement showing, with respect
308 to the year ending the immediately preceding December
309 thirty-first for nonadmitted insurance where the home state of
310 the insured is this state:

311 (1) The gross amounts charged for surplus lines insurance
312 [with respect to risks located within this state], exclusive of
313 sums collected for the payment of federal, state or local taxes;

314 (2) The amount of net premiums with respect to the
315 insurance. For the purpose of this section, "net premiums"
316 means the gross amount of charges for surplus lines insurance
317 [with respect to risks located within this state], exclusive of
318 sums collected for the payment of federal, state and local
319 taxes, less returned premiums.

320 2. No later than within forty-five days after the end of
321 each calendar quarter ending March thirty-first, June thirtieth,
322 September thirtieth, and December thirty-first each surplus
323 lines broker shall report under oath to the director on forms
324 prescribed by him or her a statement showing, with respect to

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325 each respective calendar quarter for nonadmitted insurance where
326 the home state of the insured is this state:

327 (1) The gross amounts charged for surplus lines insurance
328 [with respect to risks located within this state], exclusive of
329 sums collected for the payment of federal, state, or local
330 taxes;

331 (2) The amount of net premiums with respect to the
332 insurance. For the purpose of this section, "net premiums"
333 means the gross amount of charges for surplus lines insurance
334 [with respect to risks located within this state], exclusive of
335 sums collected for the payment of federal, state, and local
336 taxes, less returned premiums.

337 384.061. 1. Notwithstanding any other provision of this
338 chapter or regulation implementing a provision of this chapter,
339 the five percent tax on net premiums imposed by sections 384.051
340 and 384.059 shall be levied upon and only upon [risks or
341 portions of risks which are located within this state. If a
342 surplus lines policy covers risks only partially located in this
343 state, the tax payable shall be computed on the portions of the
344 premium properly allocable to that portion of the risks located
345 in this state and no Missouri tax shall be charged for that
346 portion of risk which is located outside of the state of
347 Missouri] the entire gross premium for nonadmitted or surplus
348 lines insurance policies for which the home state of the insured
349 is Missouri.

350 2. Notwithstanding any other provision of this chapter or
351 regulation implementing a provision of this chapter:

352 (1) The placement of nonadmitted insurance shall be
353 subject to the statutory and regulatory requirements of this
354 chapter only if this state is the insured's home state; and

355 (2) A surplus lines broker is required to be licensed as
356 a surplus lines licensee under the provisions of this chapter
357 only if this state is the insured's home state.

358 385.200. As used in sections 385.200 to 385.220, the
359 following terms mean:

360 (1) "Administrator", the person other than a provider who
361 is responsible for the administration of the service contracts
362 or the service contracts plan or for any filings required by
363 sections 385.200 to 385.220;

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364 (2) "Business entity", any partnership, corporation,
365 incorporated or unincorporated association, limited liability
366 company, limited liability partnership, joint stock company,
367 reciprocal, syndicate, or any similar entity;

368 (3) "Consumer", a natural person who buys other than for
369 purposes of resale any tangible personal property that is
370 distributed in commerce and that is normally used for personal,
371 family, or household purposes and not for business or research
372 purposes;

373 [(3)] (4) "Dealers", any motor vehicle dealer or boat
374 dealer licensed or required to be licensed under the provisions
375 of sections 301.550 to 301.573;

376 [(4)] (5) "Director", the director of the department of
377 insurance, financial institutions and professional registration;

378 [(5)] (6) "Maintenance agreement", a contract of limited
379 duration that provides for scheduled maintenance only;

380 [(6)] (7) "Manufacturer", any of the following:

381 (a) A person who manufactures or produces the property and
382 sells the property under the person's own name or label;

383 (b) A subsidiary of the person who manufactures or
384 produces the property;

385 (c) A person who owns one hundred percent of the entity
386 that manufactures or produces the property;

387 (d) A person that does not manufacture or produce the
388 property, but the property is sold under its trade name label;

389 (e) A person who manufactures or produces the property and
390 the property is sold under the trade name or label of another
391 person;

392 (f) A person who does not manufacture or produce the
393 property but, under a written contract, licenses the use of its
394 trade name or label to another person who sells the property
395 under the licensor's trade name or label;

396 [(7)] (8) "Mechanical breakdown insurance", a policy,
397 contract, or agreement issued by an authorized insurer who
398 provides for the repair, replacement, or maintenance of a motor
399 vehicle or indemnification for repair, replacement, or service,
400 for the operational or structural failure of a motor vehicle due
401 to a defect in materials or workmanship or to normal wear and
402 tear;

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403 [(8)] (9) "Motor vehicle extended service contract" or
404 "service contract", a contract or agreement for a separately
405 stated consideration and for a specific duration to perform the
406 repair, replacement, or maintenance of a motor vehicle or
407 indemnification for repair, replacement, or maintenance, for the
408 operational or structural failure due to a defect in materials,
409 workmanship, or normal wear and tear, with or without additional
410 provision for incidental payment of indemnity under limited
411 circumstances, including but not limited to towing, rental, and
412 emergency road service, but does not include mechanical
413 breakdown insurance or maintenance agreements;

414 [(9)] (10) "Nonoriginal manufacturer's parts",
415 replacement parts not made for or by the original manufacturer
416 of the property, commonly referred to as after-market parts;

417 [(10)] (11) "Person", an individual, partnership,
418 corporation, incorporated or unincorporated association, joint
419 stock company, reciprocal, syndicate, or any similar entity or
420 combination of entities acting in concert;

421 [(11)] (12) "Premium", the consideration paid to an
422 insurer for a reimbursement insurance policy;

423 [(12)] (13) "Producer", any business entity or individual
424 person selling, offering, negotiating, or soliciting a motor
425 vehicle extended service contract and required to be licensed as
426 a producer under subsection 1 of section 385.206;

427 (14) "Provider", a person who is contractually obligated
428 to the service contract holder under the terms of a motor
429 vehicle extended service contract;

430 [(13)] (15) "Provider fee", the consideration paid for a
431 motor vehicle extended service contract by a service contract
432 holder;

433 [(14)] (16) "Reimbursement insurance policy", a policy of
434 insurance issued to a provider and under which the insurer
435 agrees, for the benefit of the motor vehicle extended service
436 contract holders, to discharge all of the obligations and
437 liabilities of the provider under the terms of the motor vehicle
438 extended service contracts in the event of nonperformance by the
439 provider. All obligations and liabilities include, but are not
440 limited to, failure of the provider to perform under the motor
441 vehicle extended service contract and the return of the unearned

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442 provider fee in the event of the provider's unwillingness or
 443 inability to reimburse the unearned provider fee in the event of
 444 termination of a motor vehicle extended service contract;

445 ~~[(15)]~~ (17) "Service contract holder" or "contract
 446 holder", a person who is the purchaser or holder of a motor
 447 vehicle extended service contract;

448 ~~[(16)]~~ (18) "Warranty", a warranty made solely by the
 449 manufacturer, importer, or seller of property or services
 450 without charge, that is not negotiated or separated from the
 451 sale of the product and is incidental to the sale of the
 452 product, that guarantees indemnity for defective parts,
 453 mechanical or electrical breakdown, labor, or other remedial
 454 measures, such as repair or replacement of the property or
 455 repetition of services.

456 385.205. 1. It is unlawful for any provider that has
 457 authorized a motor vehicle extended service contract with a
 458 consumer to fail to cause delivery to the consumer of a fully
 459 executed motor vehicle extended service contract within a
 460 commercially feasible time period, but no more than forty-five
 461 days from the date the consumer's initial payment is processed.
 462 It is the mailing, or actual delivery of the fully executed
 463 contract, whichever is earlier, that commences the free look
 464 period under subsection 14 of section 385.206.

465 2. It is unlawful for any provider, administrator,
 466 producer, or any other person who offers to a consumer a motor
 467 vehicle extended service contract, to fail, upon request, to
 468 cause delivery to the consumer of an unsigned copy of the
 469 written contract prior to the time the consumer's initial
 470 payment is processed. An offeror may comply with this provision
 471 by providing the consumer with the copy or by directing the
 472 consumer to a website containing an unsigned copy of the service
 473 contract.

474 3. A violation of this section is a level two violation
 475 under section 374.049.

476 385.206. 1. [No person shall directly] It is unlawful
 477 for any person in or from this state to sell, offer [for sale],
 478 negotiate, or solicit [the sale of] a motor vehicle extended
 479 service contract [to] with a consumer, other than the following:

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- 480 (1) A motor vehicle dealer licensed under sections 301.550
481 to 301.573, along with its authorized employees offering the
482 service contract in connection with the sale of either a motor
483 vehicle or vehicle maintenance or repair services;
- 484 (2) A manufacturer of motor vehicles, as defined in
485 section 301.010, along with its authorized employees;
- 486 (3) A federally insured depository institution along with
487 its authorized employees;
- 488 (4) A lender licensed and defined under sections 367.100
489 to 367.215, along with its authorized employees; [or]
- 490 (5) [An administrator, provider, manufacturer, or person
491 working in concert with an administrator, provider, or
492 manufacturer marketing or selling a motor vehicle extended
493 service contract demonstrating] A provider registered with the
494 director and having demonstrated financial responsibility as
495 [set forth] required in section 385.202, along with its
496 subsidiaries and affiliated entities, and authorized employees
497 of the provider, subsidiary, or affiliated entity;
- 498 (6) A business entity producer or individual producer
499 licensed under section 385.207;
- 500 (7) Authorized employees and/or authorized representatives
501 of an administrator under contract to effect coverage, collect
502 provider fees, and settle claims on behalf of a registered
503 provider, if the administrator is licensed as a business entity
504 producer under section 385.207; or
- 505 (8) A vehicle owner transferring an existing motor vehicle
506 extended service contract to a subsequent owner of the same
507 vehicle.
- 508 2. No administrator or provider shall use a dealer as a
509 fronting company, and no dealer shall act as a fronting company.
510 For purposes of this subsection, "fronting company" means a
511 dealer that authorizes a third-party administrator or provider
512 to use its name or business to evade or circumvent the
513 provisions of subsection 1 of this section.
- 514 3. Motor vehicle extended service contracts issued, sold,
515 or offered [for sale] in this state shall be written in clear,
516 understandable language, and the entire contract shall be
517 printed or typed in easy-to-read type and conspicuously disclose
518 the requirements in this section, as applicable.

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519 4. Motor vehicle extended service contracts insured under
520 a reimbursement insurance policy under subsection 3 of section
521 385.202 shall contain a statement in substantially the following
522 form: "Obligations of the provider under this service contract
523 are guaranteed under a service contract reimbursement insurance
524 policy. If the provider fails to pay or provide service on a
525 claim within sixty days after proof of loss has been filed, the
526 contract holder is entitled to make a claim directly against the
527 insurance company." A claim against the provider also shall
528 include a claim for return of the unearned provider fee. The
529 motor vehicle extended service contract also shall state
530 conspicuously the name and address of the insurer.

531 5. Motor vehicle extended service contracts not insured
532 under a reimbursement insurance policy pursuant to subsection 3
533 of section 385.202 shall contain a statement in substantially
534 the following form: "Obligations of the provider under this
535 service contract are backed only by the full faith and credit of
536 the provider (issuer) and are not guaranteed under a service
537 contract reimbursement insurance policy." A claim against the
538 provider also shall include a claim for return of the unearned
539 provider fee. The motor vehicle extended service contract also
540 shall state conspicuously the name and address of the provider.

541
542 6. Motor vehicle extended service contracts shall identify
543 any administrator, the provider obligated to perform the service
544 under the contract, the motor vehicle extended service contract
545 seller, and the service contract holder to the extent that the
546 name and address of the service contract holder has been
547 furnished by the service contract holder.

548 7. Motor vehicle extended service contracts shall state
549 conspicuously the total purchase price and the terms under which
550 the motor vehicle extended service contract is sold. The
551 purchase price is not required to be preprinted on the motor
552 vehicle extended service contract and may be negotiated at the
553 time of sale with the service contract holder.

554 8. If prior approval of repair work is required, the motor
555 vehicle extended service contracts shall state conspicuously the
556 procedure for obtaining prior approval and for making a claim,
557 including a toll-free telephone number for claim service and a

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558 procedure for obtaining emergency repairs performed outside of
559 normal business hours.

560 9. Motor vehicle extended service contracts shall state
561 conspicuously the existence of any deductible amount.

562 10. Motor vehicle extended service contracts shall specify
563 the merchandise and services to be provided and any limitations,
564 exceptions, and exclusions.

565 11. Motor vehicle extended service contracts shall state
566 the conditions upon which the use of nonoriginal manufacturer's
567 parts[,] or parts of a like kind and quality or substitute
568 service[,] may be allowed. Conditions stated shall comply with
569 applicable state and federal laws.

570 12. Motor vehicle extended service contracts shall state
571 any terms, restrictions, or conditions governing the
572 transferability of the motor vehicle extended service contract.

573 13. Motor vehicle extended service contracts shall state
574 [the] that subsequent to the required free look period specified
575 in subsection 14 of this section, a service contract holder may
576 cancel the contract at any time and the provider shall refund to
577 the contract holder one hundred percent of the unearned pro rata
578 provider fee, less any claims paid. A reasonable administrative
579 fee may be surcharged by the provider in an amount not to exceed
580 fifty dollars. All terms, restrictions, or conditions governing
581 termination of the service contract by the service contract
582 holder shall be stated. The provider of the motor vehicle
583 extended service contract shall mail a written notice to the
584 contract holder within ~~[fifteen]~~ forty-five days of the date of
585 termination. The written notice required by this subsection may
586 be included with any other correspondence required by this
587 section.

588 14. Motor vehicle extended service contracts shall
589 [require] contain a free look period that requires every
590 provider to permit the service contract holder to return the
591 contract to the provider within at least twenty business days of
592 the mailing date of the motor vehicle extended service contract
593 or [within at least ten days if] the contract date if the
594 service contract is executed and delivered at the time of sale
595 or within a longer time period permitted under the contract. If
596 no claim has been made under the contract and the contract is

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597 returned, the contract is void and the provider shall refund to
598 the contract holder the full purchase price of the contract. A
599 ten percent penalty of the amount outstanding per month shall be
600 added to a refund that is not paid within [thirty] forty-five
601 days of return of the contract to the provider. If a claim has
602 been made under the contract during the free look period and the
603 contract is returned, the provider shall refund to the contract
604 holder the full purchase price less any claims that have been
605 paid. The applicable free-look time periods on service
606 contracts shall apply only to the original service contract
607 purchaser.

608 15. Motor vehicle extended service contracts shall set
609 forth all of the obligations and duties of the service contract
610 holder, such as the duty to protect against any further damage
611 and the requirement for certain service and maintenance.

612 16. Motor vehicle extended service contracts shall state
613 clearly whether or not the service contract provides for or
614 excludes consequential damages or preexisting conditions.

615 17. The contract requirements of subsections 3 to 16 of
616 this section shall apply to motor vehicle extended service
617 contracts made with consumers in this state. A violation of
618 subsections 3 to 16 of this section is a level two violation
619 under section 374.049.

620 18. A violation of subsection 1 or 2 of this section is a
621 level three violation under section 374.049.

622 385.207. 1. A business entity, prior to selling,
623 offering, negotiating, or soliciting a motor vehicle extended
624 service contract with a consumer under subdivision (6) of
625 subsection 1 of section 385.206, shall apply for and obtain
626 licensure with the director as a business entity producer in
627 accordance with this section.

628 2. A business entity applying for a producer license under
629 sections 385.200 to 385.220 shall make application to the
630 director on an application made available by the director and
631 shall pay an initial and renewal licensure fee in an amount to
632 be determined by the director, but which shall not exceed one
633 hundred dollars for a business entity. All applications shall
634 include the name of the business entity, the business address or
635 addresses of the business entity, and the type of ownership of

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636 the business entity. If a business entity is a partnership or
637 unincorporated association, the application shall contain the
638 name and address of every person or corporation having a
639 financial interest in or owning any part of the business entity.
640 If the business entity is a corporation, the application shall
641 contain the names and addresses of all officers and directors of
642 the corporation. If the business entity is a limited liability
643 company, the application shall contain the names and addresses
644 of all members and officers of the limited liability company,
645 and a list of all persons employed by the business entity and to
646 whom it pays any salary or commission for the sale,
647 solicitation, negotiation, or procurement of any motor vehicle
648 extended service contract.

649 3. An individual, prior to selling, offering, negotiating,
650 or soliciting a motor vehicle extended service contract with a
651 consumer under subdivision (6) of subsection 1 of section
652 385.206, shall apply for and obtain licensure with the director
653 as an individual producer in accordance with this section.

654 4. An individual applying for a producer license under
655 section 385.200 to 385.220 shall make application to the
656 director on an application made available by the director and
657 shall pay an initial and renewal licensure fee in an amount to
658 be determined by the director, but which shall not exceed
659 twenty-five dollars for an individual producer. No examination
660 of an applicant under this subsection shall be required.

661 5. Unless licensure is refused by the director under
662 section 385.209, persons applying for license under this section
663 shall be issued a producer license for a term of two years. A
664 producer's license shall be renewed biennially upon application
665 for renewal and payment of the fee. Such license shall continue
666 in effect unless terminated under subsection 6 of this section,
667 or refused, revoked, or suspended under section 385.209.

668 6. A producer license issued under this section, if not
669 renewed by the director by its expiration date, shall terminate
670 on its expiration date and shall not after that date authorize
671 its holder under sections 385.200 to 385.220 to sell, offer,
672 negotiate, or solicit motor vehicle extended service contracts.

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673 7. In connection with a business entity's application as
674 a producer and at renewal, the business entity shall provide a
675 list to the director of all locations in this state at which it
676 offers motor vehicle extended service contracts.

677 8. The director shall adopt rules under section 385.218
678 relating to licensing and practices of persons acting as a
679 producer under this section.

680 385.208. 1. [A provider shall not] It is unlawful for a
681 provider, administrator, producer, or any other person selling,
682 offering, negotiating, or soliciting a motor vehicle extended
683 service contract to:

684 (1) Use in its name the words insurance, casualty,
685 guaranty, warranty, surety, mutual, or any other words
686 descriptive of the insurance, casualty, guaranty, or surety
687 business, nor shall such [provider] person use a name
688 deceptively similar to the name or description of any insurance
689 or surety corporation, or any other provider[. This section
690 shall not apply to a company], provided that this prohibition
691 shall not apply to any provider or administrator that was using
692 any of the prohibited language in its name prior to [August 28,
693 2007. However, a company using the prohibited language in its
694 name shall disclose] January 1, 2011, and it discloses
695 conspicuously in its motor vehicle extended service contract the
696 following statement: "This agreement is not an insurance
697 contract.";

698 (2) Directly or indirectly, represent in any manner,
699 whether by telemarketing, broadcast marketing, electronic media,
700 written solicitation or any other advertisement, offer, or
701 solicitation, a false, deceptive, or misleading statement with
702 respect to:

703 (a) An affiliation with a motor vehicle manufacturer or
704 dealer;

705 (b) Possession of information regarding a motor vehicle
706 owner's current motor vehicle manufacturer's original equipment
707 warranty;

708 (c) The expiration of a motor vehicle owner's current
709 motor vehicle manufacturer's original equipment warranty;

710 (d) A requirement that such motor vehicle owner register
711 for a new motor vehicle extended service contract with such

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712 provider in order to maintain coverage under the motor vehicle
 713 owner's current motor vehicle extended service contract or
 714 manufacturer's original equipment warranty; or

715 (e) Any term or provision of a motor vehicle extended
 716 service contract.

717

718 A violation of this subsection is a level three violation under
 719 section 374.049.

720 2. [A provider or its representative shall not in its
 721 motor vehicle extended service contracts or literature make,
 722 permit, or cause to be made any false or misleading statement,
 723 or deliberately omit any material statement that would be
 724 considered misleading if omitted, in connection with the sale,
 725 offer to sell or advertisement of a motor vehicle extended
 726 service contract] It is unlawful for any person, in connection
 727 with the offer, sale, solicitation, or negotiation of a motor
 728 vehicle extended service contract, directly or indirectly to:

729 (1) Employ any deception, device, scheme, or artifice to
 730 defraud;

731 (2) As to any material fact, make or use any
 732 misrepresentation, concealment, or suppression;

733 (3) Engage in any pattern or practice of making any false
 734 statement of material fact; or

735 (4) Engage in any act, practice, or course of business
 736 which operates as a fraud or deceit upon any person.

737

738

739 A violation of this subsection is a level three violation under
 740 section 374.049.

741 3. Any person who knowingly employs, uses, or engages in
 742 any conduct in violation of subsection 2 of this section with
 743 the intent to defraud shall be guilty of a felony and, upon
 744 conviction, may be subject to imprisonment for a term not to
 745 exceed ten years. In addition to any fine or imprisonment
 746 imposed, a court may order restitution to the victim.

747 4. A person, such as a bank, savings and loan association,
 748 lending institution, manufacturer or seller of any product,
 749 shall not require the purchase of a service contract as a
 750 condition of a loan or a condition for the sale of any property.

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751 A violation of this subsection is a level one violation under
 752 section 374.049.

753 385.209. 1. The director may suspend, revoke, refuse to
 754 issue, or refuse to renew a registration or license under
 755 sections 385.200 to 385.220 for any of the following causes, if
 756 the applicant or licensee or the applicant's or licensee's
 757 subsidiaries or affiliated entities acting on behalf of the
 758 applicant or licensee in connection with the applicant's or
 759 licensee's motor vehicle extended service contract program has:

760 (1) Filed an application for license in this state within
 761 the previous ten years, which, as of the effective date of the
 762 license, was incomplete in any material respect or contained
 763 incorrect, misleading, or untrue information;

764 (2) Violated any provision in sections 385.200 to 385.220,
 765 or violated any rule, subpoena, or order of the director;

766 (3) Obtained or attempted to obtain a license through
 767 material misrepresentation or fraud;

768 (4) Misappropriated or converted any moneys or properties
 769 received in the course of doing business;

770 (5) Been convicted of any felony;

771 (6) Used fraudulent, coercive, or dishonest practices, or
 772 demonstrated incompetence, untrustworthiness, or financial
 773 irresponsibility in the conduct of business in this state or
 774 elsewhere;

775 (7) Been found in violation of law by a court of competent
 776 jurisdiction in an action instituted by any officer of any state
 777 or the United States in any matter involving motor vehicle
 778 extended service contracts, financial services, investments,
 779 credit, insurance, banking, or finance;

780 (8) Had a producer license or its equivalent, denied,
 781 suspended, or revoked in any other state, province, district, or
 782 territory;

783 (9) Been refused a license or had a license revoked or
 784 suspended by a state or federal regulator of service contracts,
 785 financial services, investments, credit, insurance, banking, or
 786 finance;

787 (10) Signed the name of another to an application for
 788 license or to any document related to a motor vehicle extended
 789 service contract transaction without authorization;

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790 (11) Unlawfully acted as a producer without a license;

791 (12) Failed to comply with an administrative or court
792 order imposing a child support obligation;

793 (13) Failed to comply with any administrative or court
794 order directing payment of state or federal income tax; or

795 (14) Has within the last fifteen years been declared
796 insolvent by the director or a motor vehicle extended service
797 contract regulator of another state or has been the subject of
798 a bankruptcy petition.

799 2. In the event that the action by the director is not to
800 renew or to deny an application for a license, the director
801 shall notify the applicant or licensee in writing and advise the
802 applicant or licensee of the reason for the denial or
803 nonrenewal. Appeal of the nonrenewal or denial of the
804 application for a license shall be made pursuant to the
805 provisions of chapter 621. Notwithstanding section 621.120, the
806 director shall retain discretion in refusing a license or
807 renewal and such discretion shall not transfer to the
808 administrative hearing commission.

809 3. The license of a business entity producer may be
810 suspended, revoked, renewal refused, or an application may be
811 refused if the director finds that a violation by an individual
812 acting under the direction of the business entity was known or
813 should have been known by one or more of the partners, officers,
814 or managers acting on behalf of the business entity and the
815 violation was neither reported to the director nor corrective
816 action taken.

817 4. The director may also revoke or suspend under
818 subsection 1 of this section any license issued by the director
819 where the licensee has failed to renew or has surrendered such
820 license.

821 5. Every producer licensed under this section shall notify
822 the director of any change of address, on forms prescribed by
823 the director, within thirty days of the change. If the failure
824 to notify the director of the change of address results in an
825 inability to serve the producer with a complaint as provided by
826 sections 621.045 to 621.198, then the director may immediately
827 revoke the license of the producer until such time as service
828 may be obtained.

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829 6. A producer shall report to the director any license
830 revocation or civil action taken against the producer in another
831 jurisdiction or by another governmental agency in this state
832 within thirty days of the final disposition of the matter. This
833 report shall include a copy of the order, consent order, or
834 other relevant legal documents.

835 7. Within thirty days of the initial pretrial hearing date
836 or arraignment, a producer shall report to the director any
837 felony proceeding initiated by any state or the United States
838 for any violation of law by the producer. The report shall
839 include a copy of the indictment or information filed, the order
840 resulting from the hearing and any other relevant legal
841 documents.

842 385.211. 1. A provider registered to issue motor vehicle
843 extended service contracts in this state shall maintain a
844 register of business entity producers who are authorized to
845 sell, offer, negotiate, or solicit the sale of motor vehicle
846 extended service contracts in this state, and shall make such
847 list available for inspection upon request by the director.
848 Within thirty days of a provider authorizing a producer to sell,
849 offer, negotiate, or solicit motor vehicle extended service
850 contracts, the provider shall enter the name and license number
851 of the producer in the company registry of producers.

852 2. Within thirty days of a provider terminating a business
853 entity producer's appointment to sell, offer, negotiate, or
854 solicit motor vehicle extended service contracts, the provider
855 shall update the registry with the effective date of the
856 termination. If a provider has possession of information
857 relating to any cause for discipline under section 385.209, the
858 provider shall notify the director of this information in
859 writing. The privileges and immunities applicable to insurers
860 under section 375.022 shall apply to providers for any
861 information reported under this subsection.

862 Section B. Because immediate action is necessary to ensure
863 the continued application of Missouri law regulating and taxing
864 surplus lines insurance in accordance with Public Law 111-203,
865 the repeal and reenactment of sections 384.015, 384.017,
866 384.021, 384.043, 384.051, 384.057, and 384.061 of section A of
867 this act is deemed necessary for the immediate preservation of

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868 the public health, welfare, peace, and safety, and is hereby
869 declared to be an emergency act within the meaning of the
870 constitution, and the repeal and reenactment of sections
871 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and
872 384.061 of section A of this act shall be in full force and
873 effect upon its passage and approval.

874 Section C. The repeal and reenactment of sections 385.200,
875 385.206, and 385.208, and the enactment of sections 385.205,
876 385.207, 385.209, and 385.211 of section A of this act shall
877 become effective January 1, 2012.

878

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